

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Keene Analyst: Deborah Barrett Bill Number: AB 2362
Related Bills: See Legislative History Telephone: 845-4301 Amended Date: April 3, 2008
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agencies Provide Certain Notification To Residents Of State When Collecting Personal Information

SUMMARY

This bill would require state agencies to provide a specific notice to residents of the state when personal information is collected.

SUMMARY OF AMENDMENTS

The April 3, 2008, amendments deleted nonsubstantive technical changes to the Government Code and added language requiring state agencies to provide a notice to residents of the state when personal information is collected that the information will be handled in a secure manner to prevent unauthorized disclosure and in the event of a breach of security, the resident will be promptly notified. This is the department's first analysis of this bill.

PURPOSE OF THE BILL

It appears the purpose of this bill is to assure California residents that their personal information would be adequately protected while in the hands of a state agency.

EFFECTIVE/OPERATIVE DATE

As an administrative measure, this bill would be effective January 1, 2009, and operative on or after that date.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Current state law requires a state agency to notify a resident of California in the event their personal information has been acquired by an unauthorized person due to a breach of security of that agency's computer system. A "breach of the security of the system" is the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information; however, an employee or agent of an agency is authorized to acquire personal information to perform his or her work duties.

Board Position:

_____ S	_____ NA	_____ NP
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_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Selvi Stanslaus

4/25/08

“Personal information” is defined as a person’s first name or first initial and last name, in combination with one or more of the following data elements when either the name or the data elements are not encrypted:

- Social security number,
- Driver’s license number or California Identification Card number,
- Account number, credit card number, or debit card number along with the required security code, access code, or password.

Personal information does not include information that is legally made available to the general public from federal, state, or local government records.

State law requires notification to be made in the most expedient time possible and without unreasonable delay. If the agency maintains computerized data, but does not own the data, the agency must notify the owner or licensee of the information of the breach immediately following discovery. State law requires notification to be made by either written, electronic, or substitute notice. Any agency that maintains its own notification procedures is considered to be in compliance. Persons must be notified in accordance with those procedures and those procedures must be consistent with the timing requirements of current law.

THIS BILL

This bill would require a state agency to provide a notice informing residents of the following when collecting personal information:

- The agency will handle personal information in a secure manner to prevent unauthorized disclosure, and
- The resident will be notified promptly in the event of a breach of security of a system containing personal information.

IMPLEMENTATION CONSIDERATIONS

The bill would require an agency to provide a notice to state residents when collecting personal information. It is unclear whether the author intends one notice to a taxpayer for each item of information collected or whether one notice to a taxpayer will suffice where multiple records are collected. It is recommended that the author clarify whether a one time notice is sufficient for complying with this bill, or whether each incidence of data collection would require a notice to the impacted taxpayers.

PROGRAM BACKGROUND

The Franchise Tax Board (FTB) collects personal information from over 250 data sources that include the taxpayers themselves through tax returns, employers through wage reporting, licensing boards, the IRS, state agency databases, and numerous other sources. Each of these sources provides files that contain over 60 million records of personal information.

LEGISLATIVE HISTORY

AB 1779 (Jones, 2007/2008) would require that when a breach of security occurs on data systems containing personal information, any substitute notice regarding the breach also be provided to the Office of Privacy Protection (OPP). This bill was passed out of the Judiciary Committee and is awaiting hearing in the Assembly Appropriations Committee.

AB 779 (Jones, 2007/2008) would have reduced the cost threshold under which state agencies can elect to provide substitute notice in the event of a breach of security of data systems containing personal information. AB 779 was vetoed by Governor Schwarzenegger, whose veto message can be found in Appendix A of this analysis.

SB 364 (Simitian, 2007/2008) would require that a copy of any notification of breach be sent to the OPP and would not limit it to the substitute notification. SB 364 is currently being held at the Assembly Desk.

SB 852 (Bowen, 2005/2006) would have expanded notice requirements to taxpayers on security breaches of personal information from only computerized data to all forms of data maintained by agencies and businesses. This bill did not pass out of the Assembly Committee on Business and Professions.

SB 1279 (Bowen, 2003/2004) would have required a state agency to provide a credit monitoring service to a person whose personal information was or may have been acquired by an unauthorized person due to a breach of security in a state agency's computer system. This bill did not pass out of the Assembly Committee on Business and Professions.

AB 700 (Simitian, Stats. 2002, Ch. 1054) established the notice requirements for breach of security of systems containing personal information.

FISCAL IMPACT

Because personal information is collected from multiple sources, FTB would need to provide the notice required under this bill's provisions to approximately 60 million taxpayers. Postage for a one time notice alone could run in excess of \$24.6 million, with additional costs for production and distribution of the notice required under this bill's provisions. A full cost estimate will be developed as this bill moves through the legislative process and the implementation concern is resolved.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

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APPENDIX A TO AB 2362
Veto Messages from Prior Bills

BILL NUMBER: AB 779
VETOED DATE: 10/13/2007

To the Members of the California State Assembly:

I am returning Assembly Bill 779 without my signature.

Protecting the personal information of every Californian is very important to me and I am committed to strong laws that safeguard every individual's privacy and prevent identity theft. Clearly, the need to protect personal information is increasingly critical as routine commercial transactions are more and more exclusively accomplished through electronic means.

However, this bill attempts to legislate in an area where the marketplace has already assigned responsibilities and liabilities that provide for the protection of consumers. In addition, the Payment Card Industry has already established minimum data security standards when storing, processing, or transmitting credit or debit cardholder information. This industry has the contractual ability to mandate the use of these standards, and is in a superior position to ensure that these standards keep up with changes in technology and the marketplace. This measure creates the potential for California law to be in conflict with private sector data security standards.

While I support many of the provisions of this bill, it fails to provide clear definition of which business or agency "owns" or "licenses" data, and when that business or agency relinquishes legal responsibility as the owner or licensee. This issue and the data security requirements found in this bill will drive up the costs of compliance, particularly for small businesses.

I encourage the author and the industry to work together on a more balanced legislative approach that addresses the concerns outlined above.

Sincerely,

Arnold Schwarzenegger